

DOOLEY LANNEN ROBERTS & FOWLER LLP
Suite 201, Orlean Pacific Plaza
865 South Marine Drive
Tamuning, Guam 96913
Telephone: (671) 646-1222
Facsimile: (671) 646-1223

Attorneys for Plaintiff
CAP America Trust

RECEIVED
AUG - 8 2002
DISTRICT COURT OF GUAM
HAGATNA, GUAM

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IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

CAP AMERICA TRUST,)	CIVIL CASE NO. CIV	<u>02-00024</u>
)		
Plaintiff,)		
)		
vs.)	COMPLAINT	
)		
GOVERNMENT OF GUAM,)		
)		
Defendant.)		
)		

Plaintiff, CAP America Trust, for its complaint against Defendant, Government of Guam, hereby alleges as follows:

1. This is a complaint to recover tax refunds under the Guam Territorial Income Tax. This court has exclusive jurisdiction over the subject matter of this action pursuant to 48 U.S.C. §1424 and 48 U.S.C. §1421i(h)(1).
2. This action arises under the provisions of 48 U.S.C. §1421i(h)(2), 28 U.S.C. §1346(a)(1) and also 26 U.S.C. §7422.
3. Plaintiff, CAP America Trust, Employer Identification Number 98-6042419, is a foreign trust lawfully organized and operating pursuant to the laws of Guernsey, Channel Islands, is

ORIGINAL

a citizen of Guernsey, Channel Islands, with its principal office at 36 Fitzwilliam Place, Dublin 2, Ireland.

4. Defendant is the government of Guam.
5. Venue properly lies in this district pursuant to 48 U.S.C. §1421i(h).

COUNT I

6. CAP America Trust timely filed its income tax return, Form 1040NR, for tax year 1994 with the Department of Revenue and Taxation, government of Guam.

7. CAP America Trust paid all taxes due under the Guam Territorial Income Tax with respect to tax year 1994 and has never received from the Department of Revenue and Taxation, government of Guam, a statutory Notice of Deficiency.

8. CAP America Trust's 1994 tax return, form 1040NR, disclosed an overpayment of tax liability in the amount of \$281,251.00 and constituted CAP America Trust's claim for a tax refund, filed under penalty of perjury, according to the provisions of law in that regard and the regulations of the Secretary of the Treasury, as required by 26 U.S.C §7422(a).

9. The Department of Revenue and Taxation, government of Guam, has not paid the tax refund due CAP America Trust for tax year 1994 nor has it delivered to CAP America Trust by registered or certified mail its Notice of Disallowance thereon.

10. CAP America Trust has exhausted all administrative remedies required of it to secure payment of its tax refund for tax year 1994.

11. CAP America Trust has been damaged by the failure of the Department of Revenue and Taxation, government of Guam, to pay the refund for tax year 1994 in the amount thereof together with applicable interest, attorney's fees and costs according to law and proof.

COUNT II

12. CAP America Trust re-alleges and incorporates herein by reference all allegations of Paragraphs 1 through 11 of this Complaint as set forth above.

13. On February 11, 2000, John P. Camacho, Acting Deputy Tax Commissioner for the Department of Revenue and Taxation, government of Guam acknowledged CAP America Trust's claim for a tax refund in the amount of \$281,251.00 for calendar year 1994 as filed on Form 1040NR and agreed to the payment of that amount.

14. On November 16, 2001, CAP America Trust wrote to George Cruz, Director of the Department of Revenue and Taxation, government of Guam, and advised that CAP America Trust was owed a tax refund in the amount of \$281,251.00 from tax year 1994 and requested payment of that tax refund. On December 6, 2001, George Cruz wrote CAP America Trust acknowledging that it was owed that refund and stated that he would inform at a later when the Department of Revenue and Taxation would be issuing that refund to CAP America Trust.

15. Prior to the commencement of this action, Defendant acknowledged in writing the existence of the debt herein sued on. An account was stated in writing between the Plaintiff and Defendant and on such statement a balance of \$281,251.00 is due which Defendant agreed to pay to plaintiff.

16. Although Plaintiff has demanded payment, no part of the agreed balance has been paid and there is now due, owing and unpaid from Defendant to Plaintiff the sum of \$281,251.00, together with interest according to law.

COUNT III

17. CAP America Trust re-alleges and incorporates herein by reference all allegations of Paragraphs 1 through 16 of this Complaint as set forth above.

18. CAP America Trust timely filed its income tax return, Form 1040NR, for tax year 1995 with the Department of Revenue and Taxation, government of Guam.

19. CAP America Trust paid all taxes due under the Guam Territorial Income Tax with respect to tax year 1995 and has never received from the Department of Revenue and Taxation, government of Guam, a statutory Notice of Deficiency.

20. CAP America Trust's 1995 tax return, Form 1040NR, disclosed an overpayment of tax liability in the amount of \$219,153.00 and constituted CAP America Trust's claim for a tax refund, filed under penalty of perjury, according to the provisions of law in that regard and the regulations of the Secretary of the Treasury, as required by 26 U.S.C. §7422(a).

21. The Department of Revenue and Taxation, government of Guam, has not paid the tax refund due CAP America Trust for tax year 1995 nor has it delivered to CAP America Trust by registered or certified mail its Notice of Disallowance thereon.

22. CAP America Trust has exhausted all administrative remedies required of it to secure payment of its tax refund for tax year 1995.

23. CAP America Trust has been damaged by the failure of the Department of Revenue and Taxation, government of Guam, to pay the refund for tax year 1995 in the amount thereof together with applicable interest, attorney's fees and costs according to law and proof.

COUNT IV

24. CAP America Trust re-alleges and incorporates herein by reference all allegations of Paragraphs 1 through 23 of this Complaint as set forth above.

25. On November 16, 2001, CAP America Trust wrote to George Cruz, Director of the Department of Revenue and Taxation, government of Guam, and advised that CAP America Trust was owed a tax refund in the amount of \$219,153.00 from tax year 1995 and requested payment of

that tax refund. On December 6, 2001, Mr. Cruz wrote CAP America Trust acknowledging that CAP America Trust was owed that refund and stated that he would inform at a later when the Department of Revenue and Taxation would be issuing that refund to CAP America Trust.

26. Prior to the commencement of this action, Defendant acknowledged in writing the existence of the debt herein sued on. An account was stated in writing between the Plaintiff and Defendant and on such statement a balance of \$219,153.00 is due which Defendant agreed to pay to Plaintiff.

27. Although Plaintiff has demanded payment, no part of the agreed balance has been paid and there is now due, owing and unpaid from Defendant to Plaintiff the sum of \$219,153.00, together with interest according to law.

WHEREFORE, CAP America Trust prays for judgment as follows:

1. For the sum of amount \$281,251.00 together with applicable interest according to proof;
2. For the sum of amount \$219,153.00 together with applicable interest according to proof;
3. For costs of suit;
4. For attorneys' fees according to proof; and
5. For such other and further relief as the Court may deem appropriate.

Dated this 8 day of August, 2002.

DOOLEY LANNEN ROBERTS & FOWLER LLP

By:



KEVIN J. FOWLER

Attorneys for Plaintiff CAP America Trust

KJF:ml F#C272 D#CAP America Trust-Complaint

United States District Court

DISTRICT OF

CAP AMERICA TRUST,

SUMMONS IN A CIVIL CASE

v.

CASE NUMBER:

02-00024

GOVERNMENT OF GUAM,

ACKNOWLEDGED RECEIPT
By: H. Hernandez
Date: 8/28/02

TO: (Name and address of defendant)

Carl T.C. Gutierrez

Governor

GOVERNOR'S OFFICE (Ufisinan Maga'lahi)

GOVERNMENT OF GUAM

Post Office Box 2950

Hagatna, Guam 96932

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Kevin J. Fowler, Esq.
DOOLEY LANNE ROBERTS & FOWLER LLP
Suite 201, Orlean Pacific Plaza
865 South Marine Drive
Tamuning, Guam 96913
Telephone No. (761) 646-1222
Facsimile No. (671) 646-1223

an answer to the complaint which is herewith served upon you, within sixty (60) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Mary L. M. Moran

CLERK

AUG - 8 2002

DATE

/s/ Leilani R. Toves Hernandez

(BY) DEPUTY CLERK

United States District Court

DISTRICT OF

CAP AMERICA TRUST,

v.

SUMMONS IN A CIVIL CASE

CASE NUMBER:

02-00024

GOVERNMENT OF GUAM,

TO: (Name and address of defendant)

ACKNOWLEDGED RECEIPT

By: TH

Date: 8/8/02

Robert H. Kono, Esq.
Acting Attorney General
OFFICE OF THE ATTORNEY GENERAL
GOVERNMENT OF GUAM

Suite 2-200E, Guam Judicial Center, 120 West O'Brien Drive, Hagatna, Guam
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AUG - 8 2002

MARY L. M. MORAN
CLERK

DATE

/s/ Leilani R. Toves Hernandez

(BY) DEPUTY CLERK